

# **Exhibit 38**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA**

**In re: The Matter of the 2016 Presidential Election: Docket No:  
Election Matter:**

**CLASS II ELECTION CONTEST PURSUANT TO 25 P.S. 3291, 3251**

**PETITIONERS' REQUEST FOR BRIEF CONTINUANCE**

AND NOW come Petitioners, One Hundred (100) or more registered voters of the Commonwealth of Pennsylvania, by and through their counsel, and file the within application and, in support thereof, aver as follows:

1. Petitioners respectfully request that, for the reasons set forth below, this Court adjourn the hearing on this matter, fixed by this Court's order of November 29, 2016, from Monday December 5, 2016 at 10:00 am, until no earlier than 10:00 am, Thursday December 8, 2016.
2. Three principles are clear in the election code: *first*, a contest must be filed no later than twenty days from the date of the election, 25 P.S. 3456; *second*, it is customary (in non-Presidential races) for contest petitions to be held in abeyance while recount/re canvass proceedings are being resolved; and *third*, the basis for a contest petition must be stated with precision and clarity, 25 P.S. 3457.
3. In this election, many counties have not yet certified election results, and in response to timely requests for recounts/re canvassing made by hundreds of voters throughout the State, recounts are now set to occur in multiple counties. This morning, over the objection of the Republican Party, the Philadelphia Board of Elections authorized a recount request, scheduled to begin tomorrow. That recount will take multiple days. Allegheny County authorized a voter-initiated recount, and now the Republican Party has

filed a petition to stop the recount, to be heard in Allegheny Court of Common Pleas tomorrow. Voters in Bucks County requested a recount, and a court hearing in Bucks County is scheduled for Tuesday. Other recount petitions are pending in various fora throughout the State.

4. Petitioners elected to submit a timely contest petition, filed on the last available day.

Petitioners also asked this Court to hold the petition in abeyance until the recounts were concluded and the election was certified.

5. In 2016, the federal government has stated that a foreign power repeatedly tried to influence the presidential election, including through cyber attacks of election systems in Arizona, Illinois, and elsewhere. In addition, multiple, prominent computer scientists publicly offered testimony as to the extraordinary vulnerability of electronic voting machines, including voting machines used throughout Pennsylvania.
6. In order to ensure the integrity of the vote, hundreds of voters and presidential candidate Jill Stein have therefore sought two basic forms of relief before county boards of elections and in court: a hand recount of paper ballots in optical scan election districts; and a forensic examination of DRE voting systems in DRE election districts. For whatever reason, the Republican Party has done everything possible to delay, stop, and quash these efforts by Pennsylvania voters to make sure their votes were counted accurately.
7. As to the DRE districts, we believe that a forensic examination could be substantially accomplished, under governmental supervision, if necessary at the expense of the Stein campaign, and without any possibility of interfering with the vote tally in the election

machines, within a matter of days, if only computer experts were given that statutorily-entitled access by a Board of Elections or a court.

8. This Court, cognizant of various deadlines related to the Electoral College, fixed a hearing date for Monday, December 5. Respectfully, that is not enough time, and we ask the Court to adjourn the hearing for 72 hours so that the contest proceeding has the benefit of a fuller record developed in recounts and recount proceedings across the State.
9. The Petitioners' request that the hearing be delayed from Monday December 5 to Thursday, December 8 is, we submit, reasonable and consistent with the deadlines set forth in the Court's scheduling order. Given what is at stake here—the integrity of a presidential election in this state—we urge this Court to adjourn the hearing until Thursday and permit this process to proceed expeditiously, but with the benefit of a fuller record gathered in the recount process.

Respectfully submitted,

/s/ LAWRENCE M. OTTER, ESQ.

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